No. 11,946

IN THE

United States Court of Appeals

For the Ninth Circuit

AUGUST FEDERER, et al.,
Appellants,

vs.

AMERICAN PRESIDENT LINES, LTD., etc., et al.,
Appellees.

BRIEF FOR APPELLANTS.

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Subject Index

Page

Statement of Jurisdiction 2

Statement of the Case 2

Specification of Errors Relied Upon 6

Argument 7

I.

The shipping articles were clear, certain, positive and unambiguous, and definitely entitled libelants to war bonus during all of the times they were west of the 180th meridian, which included the period of internment, and until they crossed the 180th meridian eastbound 7

II.

The court erred in admitting oral and written evidence to contradict the terms of the riders attached to the shipping articles 15

III.

The District Court erred in denying appellants maintenance or subsistence during internment 18

IV.

The District Court erred in finding and decreeing that libelants were entitled only to war bonus on the repatriation voyage 23

Conclusion 25

Table of Authorities Cited

Cases

	Pages
Boulton v. Moore, 14 Fed. 922	18
Brown v. Lull, 4 Fed. Cases 2018	18
Carson v. American S. & R. Co. (D.C. Wash.), 25 Fed. (2d) 116	17
Foster v. Sampson, 9 Fed. Cases No. 4982	20
Foreman v. Benas, 247 Fed. 133	18
Lakos v. Saliaris (CCA 4), 116 Fed. (2d) 440	11
Minnesota SS Co. v. Lehigh Valley Transp. Co. (CCA 6), 129 Fed. 22	17
Northwestern Steamship Co. v. Turtle, 162 Fed. 256	18
Steeves v. American Mail Line (The Capillo), (CCA 9), 154 Fed. (2d) 24	6, 14, 15, 16, 17, 25
The Catalonia (DA Va.), 236 Fed. 554	11, 18
The Exile, 20 Fed. 878	17
The Florence Olson (CCA 9), 283 Fed. 11	11
The Glandzis v. Callinicos (CCA 2), 140 Fed. (2d) 111	11
The John L. Dimmick, 13 Fed. Cases No. 7355	20
The Lakme, 93 Fed. 230	17
The Thomas Tracy (CCA 2), 24 Fed. (2d) 372	11
The Triton, 24 Fed. Cases 14,181	17
The Ucayali, 164 Fed. 897	18
The Western Cross (CCA 2), 292 Fed. 593	11
Thompson v. The Oakland, 23 Fed. Cases 15,971	17
Young v. American Steamship Co., 15 Otto 41, 26 L. Ed. 966	8

Statutes

Act of June 7, 1872	8
Judicial Code, Section 128 (28 USCA 225, and as amended 28 USCA 1291)	2
28 USCA 41 [3], and as amended 28 USCA 1333	2
28 USCA 230, and as amended 28 USCA 2107	2
46 USCA 564	8, 10
46 USCA 567	9
46 USCA 568, 575	9
46 USCA 578	9

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BRIEF FOR APPELLANTS.

This is an appeal by libelants, merchant seamen, to recover wages (war bonus) and maintenance. This action was consolidated for trial with several others, which are also on appeal to this Court (*Agnew, et al. v. American President Lines,* No. 11,943; *Griffin, et al., v. American President Lines,* No. 11,944; and *Wharton v. American President Lines,* No. 11,945). Libelants have appealed from the final decree entered in this cause because the District Court failed to award libelants war bonus and maintenance as claimed and proved (A.* p. 185). The appeals are presented on typewritten apostles, with the reporter's transcript in common, and the original exhibits and depositions are

*The letter "A" designates Apostles on Appeal, or Clerk's Record; the Reporter's Record will be referred to as "R".

before the Court. The District Court wrote an opinion which is reported at 73 Fed. Sup. 944.

STATEMENT OF JURISDICTION.

This was an action by libelants, merchant seamen, for wages (war bonus) and maintenance. The District Court had jurisdiction (28 USCA 41 [3]; and as amended, 28 USCA 1333). The final decree was entered by the District Court on November 18, 1947 (A, p. 185). Libelants' petition for appeal was filed on November 25, 1947 (A, p. 188), and the appeal was allowed the same day. Citation on appeal was issued on November 25, 1947 (A, p. 190). The appeals were timely (28 USCA 230; and as amended, 28 USCA 2107). Jurisdiction of this Court to review the final decree of the District Court is sustained by § 128 of the Judicial Code (28 USCA 225; and as amended, 28 USCA 1291).

STATEMENT OF THE CASE.

Libelants, merchant seamen, in this case were unlicensed members of the Stewards Department of the *SS President Harrison,* which departed San Francisco on a voyage to the Orient on October 17, 1941. The appellee, American President Lines, was the owner and operator of the vessel. Libelants in this case also were members of the National Union of Marine Cooks & Stewards, formerly known as the Marine Cooks & Stewards Association of the Pacific

Coast. The articles for this voyage were signed on October 15, 1941. A rider was attached to those articles for the benefit of all unlicensed personnel and specifically the libelants in this case, as follows:

"Rider for Passenger & Freight Vessels in the Transpacific & Straits Settlement Service

1. The American President Lines agrees to pay an emergency wage increase to the unlicensed crew of the *SS President Harrison,* Voyage 55, as follows:

2. The monthly basic wages as shown in the following agreements between the Pacific American Shipowners Association and the Unions are to be used as the basis for payment of this increase:

Sailors' Union of the Pacific — Effective October 10, 1939.

Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers' Association—Effective October 1, 1941.

Marine Cooks and Stewards' Assn. of the Pacific Coast — Effective July 5, 1940.

3. To all employees entitled to receive basic wages of $120.00 per month or less under said agreement, the sum of $80 per month.

4. To all employees entitled to receive in excess of $120.00 per month under said agreement, 66⅔% of such basic monthly wage.

5. The emergency wage increase to apply from the crossing of the 180th meridian westbound until crossing the 180th meridian eastbound.

6. In the event the vessel is interned, destroyed or abandoned as a result of war operations and

is unable to continue her voyage, basic wages and emergency wages specified in the collective bargaining agreement between the Pacific American Shipowners Association and the Unions shown above shall be paid to the date the members of the crew arrive in a Continental United States port and the employee shall be repatriated to a Continental United States port. War bonuses at the rates specified in paragraphs 3 and 4 hereof shall be paid while employees are in the war zones defined herein.

7. In the event the loss of personal effects by any member of the unlicensed crew, due to necessity of abandoning ship resulting from torpedoing, mining of bombing of the vessel, the Company agrees to reimburse each unlicensed man so affected by an amount not in excess of $150.00.

8. War risk insurance in the sum of $5,000 shall be furnished to members of the crews on this voyage.

AMERICAN PRESIDENT LINES, LTD.

(SEAL)
U. S. SHIPPING COMMISSIONER,
Port of San Francisco, Calif.
/s/ R. A. Frediani."

The *President Harrison* crossed the 180th meridian westbound on October 28, 1941. On December 8, 1941, the vessel was intercepted by the Japanese and the crew attempted to scuttle her. This occurred at Shaweishan Island, China. The crew left the vessel, but were captured and ordered back to her and worked for a number of days putting her into condition, after

which the vessel proceeded to Shanghai under her own power. Crew members remained aboard until they were put ashore at Shanghai—some on March 5 and others on March 12, 1942.

The internment of the unlicensed personnel by the Japanese west of the 180th meridian lasted from December 8, 1941, until August 15, 1945. Thereafter the appellants were repatriated by the United States Government to continental United States ports. On the repatriation voyage the appellants in this action were west of the 180th meridian for a period of 17 days.

At the time of their discharge at a continental United States port, libelants were paid their basic wages and emergency wages until the date of discharge. They were not paid maintenance. They were also paid war bonus from the date the vessel crossed the 180th meridian westbound on October 28, 1941, until the date of capture by the Japanese on December 8, 1941.

They were not paid war bonuses from the period commencing with their capture by the Japanese west of the 180th meridian and ending with their crossing of the 180th meridian eastbound on the repatriation voyage on October 12, 1945. Nor were they paid any maintenance. The entitlement of libelants to these demands is the question presented to this Court on the instant appeal. It was stipulated by appellee that the payments made to libelants would not constitute a waiver of the claims made in the court below or here (R. 82).

By their libels appellants in this case each sought to recover war bonus (emergency wage increase) in the amount of $3800, and maintenance for the period of internment at the rate of $3.75 per day in the amount of $5,302.50, less whatever sums were paid to libelants through the Swiss Consul during internment (A, p. 6).

The District Court found that the shipping articles did not entitle appellants to the war bonus they claimed during internment, but that they were entitled to war bonus for the time consumed west of the 180th meridian on the repatriation voyage. The District Court also found that appellants were not entitled to recover maintenance. Each libelant was awarded a small sum of money on account of repatriation bonus.

The question of war bonus for interned seamen was considered and determined by this Court in *Steeves v. American Mail Line (The Capillo),* (9 CCA), 154 Fed. (2d) 24.

Appellants strongly rely upon the *Capillo* decision to support a reversal in this case. The question of maintenance for interned seamen is one of first impression, and it is appellants' contention that under the general maritime law they are entitled to recover maintenance money for the period of internment.

SPECIFICATION OF ERRORS RELIED UPON.

The appellants rely upon all of the errors assigned and specified (A, pp. 191-192).

ARGUMENT.

I.

THE SHIPPING ARTICLES WERE CLEAR, CERTAIN, POSITIVE AND UNAMBIGUOUS, AND DEFINITELY ENTITLED LIBELANTS TO WAR BONUS DURING ALL OF THE TIMES THEY WERE WEST OF THE 180TH MERIDIAN, WHICH INCLUDED THE PERIOD OF INTERNMENT, AND UNTIL THEY CROSSED THE 180TH MERIDIAN EASTBOUND.

Assignment of Error No. 1: "The Court erred in holding the rider governing unlicensed personnel, attached to the shipping articles of the *SS President Harrison,* signed by libelants on October 15, 1941, was in any respect ambiguous, vague or uncertain."

The shipping articles are in evidence as Libelants' Exhibit No. 1. Attached thereto was the rider set forth in full above. The rider was prepared by appellee shipowner American President Lines.

It was the contention of appellee and the finding of the trial court that there was an ambiguity in the shipping articles, to wit, that the term "war zones" was not defined in the rider or articles, and therefore the court was free to consider extrinsic evidence to explain the ambiguity (73 Fed. Sup. 949). In this connection the trial court permitted the supplementary bonus agreements to come into evidence to explain what was meant by "war zones."

With this finding of the trial court appellants must strenuously disagree. In our mind there is nothing ambiguous or uncertain about the rider and the articles. On their face they constitute a full, complete and binding agreement, and the action of the trial

court in permitting extrinsic evidence to explain an alleged ambiguity is not only a perversion of unequivocal language but is also a violation of the basic principles dealing with shipping articles for the protection of merchant seamen.

The statutes of the United States particularly describe the formalities of engaging seamen to go upon foreign voyages. The Act of June 7, 1872, as amended, popularly known as "The Shipping Commissioners Act," was passed to remedy tremendous abuses which were visited upon seamen in the shipping of crews. Prior to the passage of these acts, seamen were shanghaied, shipped through boarding houses, and did not have the protection of written articles. Oftentimes at the end of a long voyage and because of hardships visited upon them by masters of vessels, they deserted rather than claim the small amounts of wages due them. In 1872 a ground swell of indignation led to remedial congressional action. For a discussion see *Young v. American Steamship Co.,* 15 Otto 41, 26 L. Ed. 966. The law provided for the appointment of shipping commissioners in every port of entry which is also a port of ocean navigation of sufficient size to require one, before whom must come all matters pertaining to shipment and discharge of merchant seamen.

Section 564 of Title 46 USCA (part of the Shipping Commissioners Act) provides for written agreements and specifies in great detail what they shall contain. Before starting on any transoceanic voyage, the master of every vessel is obliged to make an agreement

in writing with every seaman whom he carries to sea as one of his crew.

Section 565 promulgates rules governing shipping articles. These are, in brief, that every agreement with exceptions not pertinent to this discussion, shall be signed by each seaman in the presence of a shipping commissioner. The agreement must be in duplicate and one copy is retained by the shipping commissioner and the other is to be delivered to the master. The agreement is to be acknowledged and certified under the hand and official seal of the shipping commissioner.

These rules are rigorously enforced and there are severe penalties for shipping seamen without articles against both the vessel (§ 567) and the master (§§ 568 and 575). All shipments made contrary to the provision of any Act of Congress are void (§ 578).

In the light of these positive requirements, there is no escape from the conclusion that the entire and only contract between libelants and respondent is to be found in the shipping articles, the riders attached thereto, and in the wage scales of the collective bargaining agreements specifically referred to and incorporated therein by reference.

The contract which should have been considered by the court below and which is the sole and only contract between the parties to be considered by this Court on the instant appeal, therefore, insofar as the members of the Stewards Department are concerned, consists of the articles, the rider, and the wage scales

as provided in the agreement between the Pacific American Shipowners Association and the Marine Cooks & Stewards Association of the Pacific, dated July 5, 1940.

It should also be noted that the requirement of the statute is that the master shall make an agreement in writing with every seaman whom he carries to sea as one of the crew (§ 564). In other words, shipping articles do not in any sense of the word constitute a collective bargaining agreement made by a representative of the union with a representative of the shipowners, even though the wage scales and perhaps other provisions contained in the shipping articles are derived from such collective bargaining agreements. The latter, however, are no part of the shipping articles unless incorporated by reference.

The provisions of the Shipping Commissioners Act summarized above are mandatory upon the courts. In the consideration of a seaman's contract of employment the court is confined to the written shipping articles signed by the parties in the presence of the shipping commissioner. Under these circumstances extraneous and extrinsic evidence has no place in the case. There is no ambiguity or uncertainty to resolve in this case. Under the rider to the shipping articles the American President Lines agreed to pay the crew a war bonus, or as it was alternately termed, an emergency wage increase. In was stipulated that these terms meant one and the same thing (R, p. 205). (See also pages 165-187.)

That a war bonus is wages within the meaning of the Shipping Commissioners Act is not open to question.

The Glandzis v. Callinicos (CCA 2), 140 Fed. (2d) 111;
Lakos v. Saliaris (CCA 4), 116 Fed. (2d) 440.

The law required the shipping articles of the *President Harrison* to contain the amount of wages which each seaman was to receive. Therefore the law was violated if the shipping articles were indefinite or uncertain as to the amount of war bonus or wages each seaman was to receive. It is fair to assume in this case that the rider and the articles prepared by American President Lines told each seaman clearly and plainly what his wages, including war bonus, on the voyage would be. Since the articles were prepared by American President Lines, they must be most strongly resolved against that company and any doubt resolved in favor of appellant seamen.

The Thomas Tracy, (CCA 2), 24 Fed. (2d) 372;
The Western Cross, (CCA 2), 292 Fed. 593;
The Florence Olson, (CCA 9), 283 Fed. 11;
The Catalonia (DA Va.), 236 Fed. 554.

The rider in question refers to "Trans-Pacific" and "Straits Settlements" service. When the *President Harrison* sailed from San Francisco for the Orient it was on Trans-Pacific service. By the express term of the rider American President Lines agreed and bound itself to pay a war bonus, emergency wage increase or wages, whatever the term may be, to the unlicensed crew members *"from the crossing of the*

180th meridian westbound until crossing the 180th meridian eastbound."

By the express term of the rider American President Lines agreed to pay this war bonus *"while employees are in the war zones defined herein."*

The *"war zones defined herein"* constitute all that area west of the 180th meridian. When the *President Harrison* crossed the 180th meridian westbound and took the crew members into that area, the crew members thereupon entered a "war zone" and remained in that war zone until such time as they crossed the 180th meridian eastbound. It seems to us that this conclusion is not subject to question, and the plain, simple and rational interpretation of the language can lead to no other finding.

We do not think it can be successfully argued that the rider means that war bonus shall be conditioned upon libelants' being attached to the service of the *President Harrison* or some other vessel. In other words, libelants need not be upon a voyage as such in order to recover the war bonus. It is sufficient if they are in the area defined by the articles. That obviously was the intention of the parties at the time the rider was prepared, and if there is any doubt it has to be resolved against American President Lines.

Consider the rider again. Paragraph 6 of the rider provides "In the event the vessel is interned, destroyed or abandoned as a result of war operations and is unable to continue her voyage, basic wages and emergency wages * * * shall be paid to the date the

members of the crew arrive in a Continental United States port * * *'' It is clear that these monies are to be paid during all of the times from the seaman's departure from the embarcation port until repatriation. The last sentence of Paragraph 6 of the rider provides: ''War bonuses at the rates specified in paragraphs 3 and 4 hereof shall be paid while employees are in the war zones defined herein.'' That also means that the war bonus shall be paid during all of the times the crew members are west of the 180th meridian.

Paragraphs 3 and 4 of the rider provide that all crew members entitled to receive a basic wage of $120 per month or less shall be paid the flat sum of $80 per month as a war bonus or emergency wage increase, and that all crew members entitled to receive in excess of $120 per month shall be paid 66⅔% of such basic monthly wages as war bonus or emergency wage increase.

Paragraph 2 provides that in order to determine the wages that are being paid and so arrive at a conclusion whether crew members are earning more or less than $120 per month reference shall be had to the wage scales in various collective bargaining agreements. The only agreement involved so far as the Stewards Department members are concerned is the collective bargaining agreement of July 5, 1940. This is the only collective bargaining agreement referred to in the rider which specifically affects appellants in the instant case, and the only purpose for referring to this agreement is to determine the rate of pay in

order to calculate war bonus or emergency wage increase.

In the *Capillo* case it was stated by this Court at 154 Fed. (2d) 25:

> "It was thought that there was some ambiguity in the provisions of these instruments which warranted testimony as to their meaning. We do not agree. It requires no testimony to make it clear that the union agreements did not provide for the bonus during the period specifically provided in the shipping articles. It is a matter of construction whether such union agreements are applicable to make nugatory the specific agreement for the internment. The stipulation that $80.00 per month is the bonus amount if there was an agreement that a bonus was payable for the internment period determines the only unknown factor of the problem."

In the *Capillo* case the only point of going to the union agreement was to determine the amount of the bonus. So in our case the only purpose for going to the union agreement of July 5, 1940, was to determine rates of pay of crew members in order to determine what the war bonus should be. Outside of that there is absolutely no reason for going to the collective bargaining agreements. Just as the rider was clear and unambiguous in the case of the *Capillo,* so is the rider here clear and unambiguous. It is difficult to contemplate how language could be more specific than in the instant case wherein it is provided that war bonus shall be paid while the seamen are west of the 180th meridian.

It should be recalled and constantly borne in mind that the rider in our case provides for payment of bonus "while employees are in the war zones defined *herein.*" *Herein* as used in this rider does not mean some collective bargaining agreement and does not require extrinsic evidence to explain. *Herein* means what is says: the war zone defined in the rider, which clearly is the area west of the 180th meridian.

For example, to again refer to the *Capillo,* 154 Fed. (2d), at page 26, the court says:

> "The words 'in effect' do not mean 'hereafter to be made.' "

Similarly the term herein, as used in the rider, does not mean "therein" or any other place or different document. The word "herein" means what it says: to wit, the rider, and the rider describes the war zone, presence within which for whatever period of time entitles the crew members to the payment of war bonus.

We submit that the rider was clear, unambiguous, all inclusive, and measures the rights and duties of the parties.

II.

THE COURT ERRED IN ADMITTING ORAL AND WRITTEN EVIDENCE TO CONTRADICT THE TERMS OF THE RIDERS ATTACHED TO THE SHIPPING ARTICLES.

Assignment of Error No. 2: "The Court erred in admitting oral and written evidence to contradict the terms of said rider."

A large volume of extrinsic evidence, to which appellants strenuously objected, was admitted by the trial court in this case, we think erroneously. Appellees introduced literally hundreds of exhibits consisting of collective bargaining agreements, made both before and after the articles were signed, none of which was incorporated in the articles by reference; also decisions of the Maritime War Emergency Board, which was not in existence at the time the articles were signed (this latter was rejected, however, by the trial court and also by this Court in the *Capillo* case). Statements, telegrams from government officials, and even inter-office communications—not a single one of these exhibits was before the shipping commissioner when the articles were signed, and they certainly were not incorporated by reference or otherwise in the articles. Appellee asked the court to find from these extraneous documents that the crew members had made a contract different from that which they had signed and the court erroneously allowed such evidence to be admitted and then relied upon it to make a finding contrary to the law and to the evidence.

These exhibits were bolstered by the affidavits of Eric Nielsen, Secretary of the Maritime War Emergency Board, and by John B. Bryan, President of the Pacific American Shipowners Association, by whom the exhibits were identified, and through whom they were placed in the record over the objection of libelants. None of the 83 exhibits listed in the index to the Bryan deposition, and none of the 18 exhibits listed in the index of the Nielsen deposition (with the

exception of the collective bargaining agreements specifically referred to by dates in the riders) was admissible. While courts of admiralty allow great latitude in receiving evidence, it is not to be supposed that evidence of every sort is competent in admiralty.

Carson v. American S. & R. Co. (D.C. Wash.), 25 Fed. (2d) 116.

Evidence should be excluded where "it is so utterly irrelevant and immaterial that there could not possibly be any doubt about it." (*Minnesota SS Co. v. Lehigh Valley Transp. Co.* (CCA 6), 129 Fed. 22.)

The depositions and exhibits above referred to obviously were incompetent and inadmissible. They certainly should not have been permitted to vary the express provisions of the contract between the parties.

As this Court said in the *Capillo,* 124 Fed. (2d) 25:

> "In construing the articles we are controlled by the elementary axiom that, if possible we will give effect to specific contractual language rather than to hold it nugatory. Mutual Life Insurance Co. v. Hill, 193 U. S. 551, 558, 24 S. Ct. 538, 48 L. Ed. 788."

It has been held in any number of cases that extrinsic evidence cannot be received to alter the terms of the shipping articles.

The Triton, 24 Fed. Cases 14,181;

Thompson v. The Oakland, 23 Fed. Cases 15,971;

The Exile, 20 Fed. 878;

The Lakme, 93 Fed. 230;

Northwestern Steamship Co. v. Turtle, 162 Fed. 256;
The Ucayali, 164 Fed. 897;
Foreman v. Benas, 247 Fed. 133.

From these cases it is evident that the specific language of the rider and articles control. There is no need to resort to extrinsic evidence.

Even if the rider was ambiguous, the ambiguity would have to be resolved against respondent American President Lines who prepared it. This is a fundamental proposition.

The Catalonia, supra;
Boulton v. Moore, 14 Fed. 922;
Brown v. Lull, 4 Fed. Cases 2018.

We submit that there was abundant and fatal error in the admission of these extraneous documents which call for a reversal of the decree.

III.

THE DISTRICT COURT ERRED IN DENYING APPELLANTS MAINTENANCE OR SUBSISTENCE DURING INTERNMENT.

Assignment of Error No. 4: "The Court erred in holding that there was no obligation by respondent to pay subsistence during internment."

It is conceded that there is no express agreement in the articles or the rider providing for the payment of subsistence during internment. The only express reference to subsistence is on the first page of the

shipping articles where there is a scale of provisions to be allowed and served out to the crew during the voyage.

Ordinarily, when the voyage is frustrated or abandoned, the articles are dissolved and no further obligation to the seaman from the shipowner exists. Therefore, when the ship was captured by the Japanese, and the voyage became no longer capable of prosecution, the articles would, if special precautions had not been taken, have been dissolved. (46 USCA 593.)

However, before the shipping articles were signed on October 15, 1941, it was well known that the vessel was carrying contraband of war, was subject to capture, and that the crew might be interned. Having these contingencies in mind, it became the custom to attach to articles riders designed to extend the obligation of the shipowner beyond the time when, by frustration of the voyage, the articles would ordinarily be dissolved.

This rider for the unlicensed personnel of the crew of the *President Harrison* was designed for just such purpose. It definitely provided for the payment of wages during the period of internment and until the crew were returned to a continental United States port. It is our contention that this obligation to pay wages during internment carried with it the implied obligation to furnish subsistence during the same period. Wages and subsistence are correlative and as long as the shipowner is under contract to pay wages, he is under obligation, sometimes expressed but always implied, to furnish subsistence.

Foster v. Sampson, 9 Fed. Cases No. 4982 (at page 573):

> "The libel also claims compensation for short provisions, in other respects, beside the bread, on the general principles of the maritime law. Proper subsistence is a part of the contract between the owners and seamen. * * *"

The John L. Dimmick, 13 Fed. Cases No. 7355 (at page 692):

> "But it has never, to my knowledge, been considered an incident to their general duty as mariners to occupy their time, while lying in port, in procuring provisions for the ship's use, either by fishing or otherwise. On the other hand the seamen stipulate for and the owners promise to pay the agreed wages. This stipulation and promise is embodied in the written contract. But there is always implied another stipulation and promise, though not put in writing, that provisions for the board of the crew shall be furnished by the master and owners, and that these shall be served out to them in sufficient amount and of suitable quality. This proviso is just as binding on the owners as the written promise to pay their wages. To withhold from them an adequate supply, or to furnish food that is unwholesome, or of an unsuitable quality, is just as much a fraud in the contract, as it would be to pay them their wages in clipped coin or depreciated bank bills. I am unable to see the ground on which a distinction can be made between one and the other. If it be a manifest wrong and fraud on the contract, it would be a reproach to the law not to furnish a remedy. What difficulties might present them-

> selves in the refined and subtle technicalities of the common law it is unnecessary here to inquire. The wrong is not beyond the remedies of a court, professing, like the admiralty, to decide ex aequo et bono, on enlarged principles of natural equity and the universal justice."

It is true that in both these cases the seamen were actually on a voyage and the ship was in commission, and neither case is direct authority for the furnishing of subsistence during a period of internment. It should not be forgotten, however, that had the seamen been on board the vessel under the command of the master, they would as a matter of course have received their subsistence as well as their wages, because to furnish subsistence is, as said above, as much an obligation of the owner as to pay wages.

The purpose of the rider was to preserve the contractual relations between the parties during the period of internment. The rider was a clear recognition of the fact that, in the absence of agreements contained in it, the shipping articles would have been terminated by internment, etc.

In this rider, the appellee clearly and definitely agreed to pay wages, and it is our contention that, having agreed to pay wages, he was similarly obligated to furnish subsistence during the period throughout which wages were being paid. If subsistence is the correlative of wages during a voyage, it is equally a correlative during the period when wages are being paid, even though no voyage is being prosecuted.

In other words, the rider obligates the appellee to duplicate during the period of internment the conditions which would have existed had the ship been prosecuting a voyage. The appellee agreed to take care of the men in either case, and taking care of them means not only paying wages, but also furnishing the men subsistence. This is the obligation implied by the maritime law from the express obligation to pay wages.

However, there is a collective bargaining agreement in this case in evidence (Libelants' Exhibit 6A), the basic collective bargaining agreement between the Marine Cooks and Stewards Association of the Pacific and the Pacific American Shipowners Association, signed July 5, 1940.

Section 7 under subdivision (d) entitled, "Working Rules Applicable on Ships Generally," provides as follows:

> "Section 7. When in port and subsistence is not furnished, members of the stewards department shall receive 75 cents per meal and when quarters are not furnished, $1.50 per day for room."

This provision is inserted as said above, in an agreement dated July 5, 1940, a time when little thought was given to problems of internment. It is probably fair to say that no party to the agreement ever specifically considered the application of this section to problems arising out of internment. Nevertheless the language of the section does not exclude internment, and internment fits the only condition laid down in the section, namely, when in port and subsistence is

not furnished. This is precisely the situation that existed all during the period of internment. Once granted the principle that subsistence is a correlative obligation derived from an express obligation to pay wages, there is no difficulty in applying the express provisions of this Section 7.

If, on the other hand, the Court should find that the parties never intended Section 7 to apply to a case of internment, then we fall back on the principles of the general maritime law that as long as wages are paid, subsistence must be furnished. In this latter case, the amount named in Section 7 ($3.75 a day) furnishes a fair estimate of the value of subsistence during the period of internment. The amount involved is primarily a question for reference if liability be determined. We submit, however, that appellee should be held liable for subsistence in some amount to be determined, during the period of internment, and until the obligation to pay wages ceased.

IV.

THE DISTRICT COURT ERRED IN FINDING AND DECREEING THAT LIBELANTS WERE ENTITLED ONLY TO WAR BONUS ON THE REPATRIATION VOYAGE.

Assignment of Error No. 5: "The Court erred in rejecting libelants' proposed amendments to Findings of Fact and Conclusions of Law submitted by respondent."

Assignment of Error No. 6: "The Court erred in settling Findings of Fact and Conclusions of Law in

favor of respondent on the issues of payment of bonus and subsistence to libelants during internment."

Assignment of Error No. 7: "The Court erred as a matter of evidence in entering a judgment and decree in favor of respondent on the issues of the payment of bonus and subsistence to libelants during internment."

Assignment of Error No. 8: "The Court erred as a matter of law in entering a judgment and decree in favor of respondent on the issues of payment of bonus and subsistence during internment."

Assignment of Error No. 9: "The judgments and decrees herein on the issues of payment of bonus and subsistence during internment are contrary to the evidence."

Assignment of Error No. 10: "The judgments and decrees on the issues of payment of bonus and subsistence during internment are contrary to law."

Assignment of Error No. 11: "The Court erred in failing to hold on the evidence and on the law that libelants were entitled to recover from respondent bonus and subsistence during internment, and in failing to enter a decree in favor of libelants on these issues."

We have already discussed the trial court's errors in denying war bonus to libelants, denying maintenance to them, and in allowing extrinsic evidence to be admitted for the purpose of explaining a purported ambiguity in the rider or shipping articles. It is clear that the rider must be considered upon its face since

the law so commands. (*Capillo,* supra.) There is no ambiguity here to be resolved by extrinsic evidence. Even if there were ambiguity, it would have to be resolved against American President Lines which drew the rider. The seamen are entitled to rely upon the contract they made, namely, that they should have war bonus during the period of internment or during all of the times they were west of the 180th meridian. All of that area constituted a war zone, and it is error to resort to collective bargaining agreements not even referred to in the rider or articles to look for a description of war zones. (*The Capillo,* supra.)

So far as maintenance or subsistence during internment is concerned, that is implied in the contract, and we submit that libelants are entitled to that also.

CONCLUSION.

It is respectfully submitted that the trial court is in error and that this Court should enter an order reversing the decree of the court below and directing the entry of a decree as prayed for by the appellants.

Dated, San Francisco, California,
October 15, 1948.

Respectfully submitted,
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